

Kappler v. Givaudan Flavors
1:01-CV-630
Defendant's Motion In Limine
re Innappropriate Pictures, etc.

Exhibit B

108TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. SCHUMER introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To eliminate the burdens and costs associated with electronic
mail spam by prohibiting the transmission of all unsolic-
ited commercial electronic mail to persons who place
their electronic mail addresses on a national No-Spam
Registry, and to prevent fraud and deception in commer-
cial electronic mail by imposing requirements on the con-
tent of all commercial electronic mail messages.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Stop Pornography and
5 Abusive Marketing Act" or the "SPAM Act".

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Electronic mail is an increasingly valuable
2 tool for personal and commercial communication.
3 Unsolicited commercial electronic mail (UCE), com-
4 monly known as spam, however, has become an im-
5 pediment to efficient electronic mail use and creates
6 problems for all types of users and organizations, in-
7 cluding Internet Service Providers, individual users,
8 and corporate organizations.

9 (2) UCE often contains objectionable, fraudu-
10 lent, and offensive content. The Federal Trade Com-
11 mission reports that over 60 percent of all UCE con-
12 tains false, misleading, or deceptive information.
13 Nearly one-fourth contains sexually explicit imagery.
14 Parents have little ability to prevent these images
15 from reaching their child's electronic mail in-box.

16 (3) Consumers increasingly ignore or delete le-
17 gitimate commercial messages as they face an ever
18 increasing amount of UCE. If the vitality and force
19 of the Internet and electronic mail are to be pre-
20 served as a tool for commercial communication,
21 UCE must be curbed.

22 (4) UCE is also a severe financial concern. Lost
23 productivity, increased spending on technology sys-
24 tems and personnel, and personal frustration are
25 some of the costs associated with UCE.

1 (5) Despite the increasing deployment of anti-
2 spam services and technology, the number and size
3 of spam messages are growing faster than ever. In
4 1999, the average electronic mail user received just
5 40 pieces of UCE per year. In 2003, the number is
6 expected to pass 2,500. Experts estimate as much as
7 70 percent of electronic mail traffic qualifies as
8 UCE.

9 (6) Existing anti-spam service solutions alone
10 are insufficient to stop the growth of spam. Despite
11 the fact that Internet Service Providers spend mil-
12 lions of dollars each year on research, filtering and
13 other anti-spam software, and larger servers to deal
14 with the ever expanding volume of UCE, current
15 technology alone cannot control the spam problem.

16 (7) Federal law does not specifically address
17 UCE and leaves Federal and State law enforcement
18 and consumers with inadequate redress for the prob-
19 lem.

20 **SEC. 3. PURPOSES.**

21 The purposes of this Act are to—

22 (1) preserve electronic mail as a vital tool in
23 interstate commerce by—

24 (A) reducing the costs associated with
25 UCE;

- 1 (B) reducing the amount of UCE; and
2 (C) eliminating false, misleading, and de-
3 ceptive content in all commercial electronic
4 mail; and
5 (2) give consumers control over their in-boxes.

6 **SEC. 4. DEFINITIONS.**

7 In this Act:

8 (1) **AFFIRMATIVE CONSENT.**—The term “af-
9 firmative consent”, when used with respect to a
10 commercial electronic mail message, means—

11 (A) the message falls within the scope of
12 an express and unambiguous invitation or per-
13 mission granted by the recipient and not subse-
14 quently revoked;

15 (B) the recipient had clear and con-
16 spicuous notice, at the time such invitation or
17 permission was granted, of—

18 (i) the fact that the recipient was
19 granting the invitation or permission;

20 (ii) the scope of the invitation or per-
21 mission, including what types of commer-
22 cial electronic mail messages would be cov-
23 ered by the invitation or permission and
24 what senders, if any, other than the party
25 to whom the invitation or permission was

1 communicated would be covered by the in-
2 vitation or permission; and

3 (iii) a reasonable and effective mecha-
4 nism for revoking the invitation or permis-
5 sion; and

6 (C) the recipient has not, after granting
7 the invitation or permission, submitted a re-
8 quest under section 204 not to receive unsolic-
9 ited commercial electronic mail messages from
10 the sender of the message.

11 (2) COMMERCIAL ELECTRONIC MAIL MES-
12 SAGE.—The term “commercial electronic mail mes-
13 sage” means any electronic mail message the pri-
14 mary purpose of which is to advertise or promote,
15 for a commercial purpose, a commercial product or
16 service (including content on an Internet website).

17 (3) COMMISSION.—The term “Commission”
18 means the Federal Trade Commission.

19 (4) DOMAIN NAME.—The term “domain name”
20 means any alphanumeric designation which is reg-
21 istered with, or assigned by, any domain name reg-
22 istrar, domain name registry, or other domain name
23 registration authority as part of an electronic mail
24 address on the Internet.

25 (5) ELECTRONIC MAIL ADDRESS.—

1 (A) IN GENERAL.—The term “electronic
2 mail address” means a destination (commonly
3 expressed as a string of characters) to which
4 electronic mail can be sent or delivered.

5 (B) INCLUSION.—In the case of the Inter-
6 net, the term “electronic mail address” may in-
7 clude an electronic mail address consisting of a
8 user name or mailbox (commonly referred to as
9 the “local part”) and a reference to an Internet
10 domain (commonly referred to as the “domain
11 part”).

12 (6) ELECTRONIC MAIL SERVICE.—The term
13 “electronic mail service” means a service for the
14 transmission of electronic mail messages that re-
15 ceives the content of, and recipient list for, electronic
16 mail messages that it sends from the person or enti-
17 ty procuring such services. For purposes of this Act,
18 to be an electronic mail service, such service must
19 retain identifying information about the person or
20 entity procuring services and cooperate with law en-
21 forcement actions brought under this Act.

22 (7) FUNCTIONING RETURN ELECTRONIC MAIL
23 ADDRESS.—

24 (A) The term “functioning return elec-
25 tronic mail address” means a legitimately ob-

1 tained electronic mail address, clearly and con-
2 spicuously displayed in an electronic mail mes-
3 sage, that—

4 (i) remains capable of receiving mes-
5 sages for no less than 30 days after the
6 transmission of such commercial electronic
7 mail message; and

8 (ii) that has capacity reasonably cal-
9 culated, in light of the number of recipi-
10 ents of the electronic mail message, to en-
11 able it to receive the full expected quantity
12 of reply messages from such recipients.

13 (B) An electronic mail address that meets
14 the requirements of subparagraph (A) shall not
15 be excluded from this definition because of a
16 temporary inability to receive electronic mail
17 messages due to technical problems, provided
18 steps are taken to correct such technical prob-
19 lems within a reasonable time period.

20 (8) HEADER INFORMATION.—The term “header
21 information” means the source, destination, and
22 routing information, or information authenticating
23 the sender, associated with an electronic mail mes-
24 sage, including the originating domain name, origi-
25 nating electronic mail address, information regard-

1 ing any part of the route that an electronic mail
2 message travels or appears to travel on the Internet
3 or on an online service, or other authenticating in-
4 formation.

5 (9) IMPLIED CONSENT.—The term “implied
6 consent”, when used with respect to a commercial
7 electronic mail message, means—

8 (A) within the 3-year period ending upon
9 receipt of such message, there has been a busi-
10 ness transaction between the sender and the re-
11 cipient (including a transaction involving the
12 provision, free of charge, of information, goods,
13 or services requested by the recipient); and

14 (B) the recipient was, at the time of such
15 transaction or thereafter, provided a clear and
16 conspicuous notice of an opportunity not to re-
17 ceive commercial electronic mail messages from
18 the sender and has not exercised such oppor-
19 tunity.

20 (10) INITIATE.—The term “initiate” means to
21 originate an electronic mail message or to procure
22 the origination of such message, regardless of wheth-
23 er the message reaches its intended recipients, and
24 does not include the actions of an Internet access
25 service or an electronic mail service used by another

1 person for the transmission of an electronic mail
2 message for which another person has provided and
3 selected the recipient electronic mail addresses. For
4 purposes of this Act, more than 1 person may be
5 considered to have initiated the same message.

6 (11) INTERNET.—The term “Internet” has the
7 meaning given that term in the Internet Tax Free-
8 dom Act (Public Law 105–277, div. C, title XI,
9 § 1101(e)(3)(c)).

10 (12) INTERNET ACCESS SERVICE.—The term
11 “Internet access service” has the meaning given that
12 term in section 231(e)(4) of the Communications
13 Act of 1934 (47 U.S.C. 231(e)(4)).

14 (13) PROTECTED COMPUTER.—The term “pro-
15 tected computer” has the meaning given that term
16 in section 1030(e)(2) of title 18, United States
17 Code.

18 (14) RECIPIENT.—The term “recipient”, when
19 used with respect to a commercial electronic mail
20 message, means the addressee of such message. If
21 an addressee of a commercial electronic mail mes-
22 sage has 1 or more electronic mail addresses in addi-
23 tion to the address to which the message was ad-
24 dressed, the addressee shall be treated as a separate
25 recipient with respect to each such address.

1 (15) REGISTERED ELECTRONIC MAIL AD-
2 DRESS.—The term “registered electronic mail ad-
3 dress” means an electronic mail address which has
4 been placed on the No-Spam Registry administered
5 by the Federal Trade Commission by the owner of
6 the electronic mail address.

7 (16) ROUTINE CONVEYANCE.—The term “rou-
8 tine conveyance” means the transmission, routing,
9 relaying, handling, or storing, through an automatic
10 technical process, of an electronic mail message for
11 which another person has provided and selected the
12 recipient addresses.

13 (17) SENDER.—The term “sender”, when used
14 with respect to a commercial electronic mail message
15 or an unsolicited commercial electronic mail mes-
16 sage, means a person who initiates such a message
17 and whose product, service, or Internet web site is
18 advertised or promoted by the message, but does not
19 include any person, including a provider of Internet
20 access service or electronic mail service, whose role
21 with respect to the message is limited to routine con-
22 veyance of the message.

23 (18) UNSOLICITED COMMERCIAL ELECTRONIC
24 MAIL MESSAGE; UCE.—

1 (A) IN GENERAL.—The terms “unsolicited
2 commercial electronic mail message” and
3 “UCE” mean any commercial electronic mail
4 message that is sent to a recipient—

5 (i) without prior affirmative consent
6 or implied consent from the recipient; or

7 (ii) to a recipient who, subsequent to
8 the establishment of affirmative or implied
9 consent under clause (i), has expressed, in
10 a reply submitted pursuant to section 204,
11 or in response to any other opportunity the
12 sender may have provided to the recipient,
13 a desire not to receive commercial elec-
14 tronic mail messages from the sender.

15 (B) EXCLUSION.—Notwithstanding sub-
16 paragraph (A), the term “unsolicited commer-
17 cial electronic mail message” does not include
18 an electronic mail message sent by or on behalf
19 of one or more lawful owners of copyright, pat-
20 ent, publicity, or trademark rights to an unau-
21 thorized user of protected material notifying
22 such user that the use is unauthorized and re-
23 questing that the use be terminated or that per-
24 mission for such use be obtained from the
25 rights holder or holders.

1 **TITLE I—PROTECTION FROM UN-**
2 **SOLICITED ELECTRONIC**
3 **MAIL**

4 **SEC. 101. ESTABLISHMENT OF THE NATIONAL NO-SPAM**
5 **REGISTRY.**

6 (a) IN GENERAL.—The Commission shall establish a
7 registry (referred to in this section as the “Registry”) in
8 which any person that does not wish to receive unsolicited
9 commercial electronic mail may register electronic mail ad-
10 dresses.

11 (b) REGISTRATION.—The Commission shall permit
12 any person to register the electronic mail addresses of the
13 person, or the electronic mail addresses over which the
14 person has authority or control, including registration by
15 electronic mail, on the Registry.

16 (c) REGISTRATION BY PARENT.—The Commission
17 shall permit a parent, legal guardian, or other person with
18 control or authority over electronic mail addresses to
19 which minor children have access, to register such ad-
20 dresses.

21 (d) PROHIBITION ON UNSOLICITED COMMERCIAL
22 ELECTRONIC MAIL TO REGISTERED ADDRESSES.—Ex-
23 cept as otherwise authorized by the Commission in regula-
24 tions prescribed under this section, it shall be unlawful

1 for a person to initiate UCE to a registered electronic mail
2 address.

3 **SEC. 102. ENFORCEMENT.**

4 (a) **ENFORCEMENT POWERS.—**

5 (1) **IN GENERAL.**—The Commission shall en-
6 force this section as part of its duties under the
7 Federal Trade Commission Act (15 U.S.C. 41 et
8 seq.).

9 (2) **REPORTING OF VIOLATIONS.**—For purposes
10 of the enforcement of section 101(d), the Commis-
11 sion shall establish procedures to permit the report-
12 ing of violations of this section to the Commission,
13 including appropriate links on the Internet web site
14 of the Commission and the use of a toll-free tele-
15 phone number (commonly referred to as an “800
16 number”) for such purposes.

17 (b) **CIVIL PENALTY.—**

18 (1) **IN GENERAL.**—The Commission may im-
19 pose a civil penalty not to exceed \$5,000 for each
20 violation of section 101(d). For purposes of this
21 paragraph, each day of violation shall constitute a
22 separate offense.

23 (2) **UNAUTHORIZED USE OF REGISTRY.**—The
24 Commission may impose a civil penalty not to exceed
25 \$100,000 for each unauthorized use of the Registry.

1 **SEC. 103. REGULATIONS.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 date of enactment of this Act, the Commission shall issue
4 regulations for establishing and maintaining the Registry,
5 providing secure distribution of the Registry to marketers
6 for the purpose of complying with this section, protecting
7 the Registry from unauthorized use, and enforcing the
8 provisions of this section.

9 (b) PROTECTION OF CHILDREN.—

10 (1) CREATION OF CATEGORIES.—The Commis-
11 sion may create specific categories of electronic mail
12 for which recipients who are minors can receive pro-
13 tection under this Act.

14 (2) TYPES OF CATEGORIES.—The categories
15 created under paragraph (1) may include—

16 (A) products or services that a minor child
17 is prohibited by law from purchasing; and

18 (B) electronic mail that contains or adver-
19 tises adult content or links to such content.

20 (3) COMPLIANCE.—Senders shall honor the cat-
21 egories created under paragraph (1) without regard
22 to actual or implied consent given by the minor.

23 (c) FEES.—The Commission shall include in its regu-
24 lations a method for assessing fees on marketers for use
25 of the Registry that are sufficient to establish, administer,
26 and maintain the Registry.

1 **SEC. 104. SAFE HARBOR FOR REASONABLE PROCEDURES.**

2 No person shall be in violation of this Act if—

3 (1) the electronic mail address has been on the
4 Registry for less than 30 days; or

5 (2) the person reasonably relies on the Registry
6 provided by the Commission and takes reasonable
7 measures to comply with this Act.

8 **TITLE II—REQUIREMENTS FOR**
9 **SENDERS OF UNSOLICITED**
10 **COMMERCIAL ELECTRONIC**
11 **MAIL AND COMMERCIAL**
12 **ELECTRONIC MAIL**

13 **SEC. 201. LABELING REQUIREMENTS FOR UNSOLICITED**
14 **COMMERCIAL ELECTRONIC MAIL.**

15 (a) INCLUSION OF IDENTIFIER IN UNSOLICITED
16 COMMERCIAL ELECTRONIC MAIL.—Except as provided in
17 subsection (b), it shall be unlawful for any person to ini-
18 tiate the transmission of any UCE to a protected com-
19 puter unless the message provides clear and conspicuous
20 identification that the message is an advertisement or so-
21 licitation, by providing, as the first characters in the sub-
22 ject line, “ADV.”.

23 (b) SAFE HARBOR.—Subsection (a) shall not apply
24 if—

25 (1) the sender is a member of a self-regulatory
26 organization approved by the Commission under

1 subsection (c) and has agreed in writing to meet the
2 requirements for participation established by that
3 organization; and

4 (2) the sender is deemed by the self-regulatory
5 organization to be in full compliance with the re-
6 quirements of that organization.

7 (c) APPROVAL BY THE COMMISSION.—The Commis-
8 sion may approve a self-regulatory organization under this
9 section if the Commission finds the following:

10 (1) PARTICIPATION REQUIREMENTS.—The self-
11 regulatory organization has implemented guidelines
12 and procedures that require program participants,
13 which may include a company or any of its divisions,
14 to—

15 (A) adhere to the requirements of this Act;

16 (B) provide information in each electronic
17 mail message sufficient to identify the company
18 on whose behalf the electronic mail is sent;

19 (C) provide notice, through a publicly
20 available policy, of—

21 (i) the ways in which electronic mail
22 addresses are collected by the participant;

23 (ii) how such addresses are used; and

24 (iii) to whom such addresses are dis-
25 closed;

1 (D) provide a conspicuous link in each
2 electronic mail message to the notice referred to
3 in subparagraph (C);

4 (E) provide recipients with a clear and
5 conspicuous opportunity to make choices re-
6 garding the use of their electronic mail address-
7 es, including the disclosure of such addresses to
8 third parties in each electronic mail message;

9 (F) enable consumers to correct or
10 modify—

11 (i) their electronic mail addresses col-
12 lected by the participant; or

13 (ii) any of the choices consumers have
14 made regarding the use and disclosure of
15 such addresses;

16 (G) take reasonable steps designed to pre-
17 vent the unauthorized disclosure or release of
18 electronic mail addresses;

19 (H) provide clear and conspicuous informa-
20 tion in each electronic mail message sufficient
21 to inform recipients how they can file a com-
22 plaint regarding the failure of a participant to
23 follow the requirements of the self-regulatory
24 organization of the stated practices of the par-
25 ticipant; and

1 (I) provide an agent for service of process
2 and consent to suit in the United States.

3 (2) ELIGIBILITY AND VERIFICATION.—The self-
4 regulatory organization has implemented procedures
5 and requirements to provide for—

6 (A) a written certification from a senior
7 corporate officer or other responsible executive
8 of the participant, prior to determining eligi-
9 bility to participate in the self-regulatory orga-
10 nization, that states—

11 (i) the participant has procedures and
12 practices in place that are designed to sat-
13 isfy, at a minimum, the guidelines, proce-
14 dures, requirements, and restrictions of the
15 self-regulatory organization; and

16 (ii) the participant has taken good
17 faith efforts to maintain compliance with
18 the guidelines, procedures, requirements,
19 and restrictions of the self-regulatory orga-
20 nization; and

21 (B) subsequent periodic review of the pol-
22 icy and practices of a participant to ensure the
23 compliance with the requirements of the organi-
24 zation.

1 (3) EVIDENCE OF PARTICIPATION.—The self-
2 regulatory organization has implemented provisions
3 to identify participation in the program, including a
4 seal that can be recognized by filtering technology.

5 (4) DISPUTE RESOLUTION PROCESS.—

6 (A) SELF-REGULATORY ORGANIZATION
7 PROCESS.—

8 (i) IN GENERAL.—The self-regulatory
9 organization has implemented a dispute
10 resolution process for recipients of UCE
11 from program participants.

12 (ii) PROCESS REQUIREMENTS.—The
13 dispute resolution process implemented
14 under clause (i)—

15 (I) must be available without
16 charge to a recipient;

17 (II) must be available to the par-
18 ticipant at a reasonable cost;

19 (III) must be completed not later
20 than 30 days after submission of a
21 dispute by the recipient and notifica-
22 tion to the participant, or not later
23 than 60 days after submission of the
24 dispute if the participant notifies the
25 recipient that additional time is re-

1 quired to obtain information to resolve
2 the dispute;

3 (IV) must include procedures for
4 suspension and termination of those
5 participants who violate the guide-
6 lines, procedures, requirements, or re-
7 strictions of the organization; and

8 (V) may include, as one option,
9 binding arbitration.

10 (B) INVOLUNTARY SUSPENSION OR TERMI-
11 NATION.—The self-regulatory organization has
12 established procedures and requirements that—

13 (i) enable a participant that is invol-
14 untarily suspended or terminated from
15 participation in the organization to take
16 timely remedial action to achieve compli-
17 ance before any suspension or termination
18 becomes final;

19 (ii) provide for mandatory, public re-
20 porting of any final decision to involun-
21 tarily suspend or terminate a participant;
22 and

23 (iii) provide for notice to the Commis-
24 sion of any final decision to involuntarily
25 terminate a participant.

1 (C) RESOLUTION BY THE COMMISSION.—

2 (i) IN GENERAL.—The Commission
3 shall promptly refer any dispute submitted
4 to the Commission to the participant in-
5 volved if the recipient at issue has not ini-
6 tially sought resolution under subpara-
7 graph (A).

8 (ii) REQUIREMENTS.—A recipient of
9 UCE may submit a dispute with a pro-
10 gram participant to the Commission for
11 resolution under this subparagraph if—

12 (I) the dispute was initially sub-
13 mitted for resolution through the dis-
14 pute resolution process of the partici-
15 pant under subparagraph (A) ;

16 (II) the dispute submitted under
17 subparagraph (A)—

18 (aa) was not resolved within
19 30 days after submission of the
20 dispute by the recipient; or

21 (bb) was not resolved to the
22 satisfaction of the recipient;

23 (III) notice of the dispute is sub-
24 mitted to the Commission not later

1 than 30 days after the recipient was
2 notified of the resolution;

3 (IV) the recipient has not volun-
4 tarily accepted a resolution of the dis-
5 pute under subparagraph (A); and

6 (V) the dispute was not resolved
7 through binding arbitration.

8 (5) INDEPENDENCE.—The self-regulatory orga-
9 nization has established requirements to help ensure
10 that program eligibility, compliance, and dispute res-
11 olution mechanisms and determinations are made
12 exclusively by persons who are independent of the
13 program participant.

14 (d) APPLICATION PROCESS.—

15 (1) IN GENERAL.—The Commission shall pro-
16 mulgate rules for the application process for the ap-
17 proval of a self-regulatory organization this section.

18 (2) PUBLIC NOTICE.—Upon receipt of an appli-
19 cation, the Commission shall provide notice of the
20 application and an opportunity for comment on the
21 application to the public.

22 (3) DECISION.—The Commission shall—

23 (A) make a decision on an application not
24 later than 180 days after the application is re-
25 ceived; and

1 (B) set forth, in writing, its conclusions
2 with regard to such requests.

3 (4) DURATION.—An application approved by
4 the Commission shall be approved for a period of 2
5 years.

6 (5) APPEAL.—Final action by the Commission
7 on a request for approval of guidelines, or the failure
8 to act within 180 days on a request for approval of
9 guidelines, may be appealed to a district court of the
10 United States or appropriate jurisdiction as provided
11 for in section 706 of title 5, United States Code.

12 (e) REVOCATION OF APPROVAL.—The Commission
13 may, after notice and an opportunity to be heard, revoke
14 approval if the Commission finds that the self-regulatory
15 organization fails to meet the requirements of this section.

16 (f) RELEASE OF CERTAIN INFORMATION.—The Com-
17 mission may compel a self-regulatory organization, or the
18 administrator of the self-regulatory organization, to pro-
19 vide proprietary information or personally identifiable in-
20 formation of consumers to the Commission.

21 (g) MISREPRESENTATION OF PARTICIPATION IN THE
22 SELF-REGULATORY ORGANIZATION.—It shall be unlawful
23 for an individual or entity to misrepresent that the indi-
24 vidual or entity is a participant in the self-regulatory orga-

1 nization, including through any evidence referred to in
2 subsection (c)(3).

3 **SEC. 202. COMPLIANCE WITH ISP POLICIES.**

4 It shall be unlawful for a person to initiate the trans-
5 mission of commercial electronic mail or UCE in violation
6 of Internet Service Provider policies with respect to elec-
7 tronic mail, account registration and use, or other terms
8 of service.

9 **SEC. 203. VALID INFORMATION.**

10 It shall be unlawful for a sender to initiate the trans-
11 mission of commercial electronic mail or UCE to a pro-
12 tected computer that contains false, misleading, or decep-
13 tive information in the subject line, header or router infor-
14 mation, or the body of the message, including the informa-
15 tion regarding unsubscribe option required by section 204.

16 **SEC. 204. UNSUBSCRIBE OPTION.**

17 (a) IN GENERAL.—All commercial electronic mail
18 and UCE shall contain the following:

19 (1) INCLUSION OF RETURN ADDRESS.—

20 (A) IN GENERAL.—A functioning return
21 electronic mail address or other Internet-based
22 mechanism, clearly and conspicuously displayed,
23 that—

24 (i) a recipient may use to submit a
25 reply electronic mail message requesting

1 not to receive any future UCE from that
2 sender at the electronic mail address where
3 the message was received; and

4 (ii) remains capable of receiving such
5 messages or communications for no less
6 than 30 days after the transmission of the
7 original message.

8 (B) TEMPORARY INABILITY TO RECEIVE
9 MESSAGES.—A return electronic mail address
10 or other mechanism does not fail to satisfy the
11 requirements of subparagraph (A) if it is unex-
12 pectedly and temporarily unable to receive mes-
13 sages due to technical or capacity problems, if
14 the problem with receiving messages is cor-
15 rected within a reasonable time period.

16 (2) NOTICE OF RIGHT TO DECLINE FURTHER
17 MESSAGES.—Clear and conspicuous notice, set out
18 in bold type and in a font no smaller than the small-
19 est font type used in the remainder of the message,
20 of the opportunity to decline to receive further com-
21 mercial electronic mail and UCE from the sender.

22 (b) VIOLATION.—It shall be unlawful for a sender to
23 initiate transmission of commercial electronic mail or
24 UCE to a recipient after that recipient has exercised the
25 unsubscribe option this section.

1 **SEC. 205. PROHIBITION OF TRANSMISSION OF COMMER-**
2 **CIAL ELECTRONIC MAIL AND UNSOLICITED**
3 **COMMERCIAL ELECTRONIC MAIL TO AD-**
4 **DRESSES OBTAINED THROUGH ILLEGAL HAR-**
5 **VESTING OR AUTOMATED MEANS.**

6 (a) IN GENERAL.—It shall be unlawful for any per-
7 son to initiate the transmission, to a protected computer,
8 of a commercial electronic mail message or UCE, or to
9 assist in the origination of such a message by providing
10 or selecting addresses to which the message will be sent,
11 if such person knows that, or acts with reckless disregard
12 as to whether—

13 (1) the electronic mail address of the recipient
14 was obtained, using an automated means, from an
15 Internet website or proprietary online service oper-
16 ated by another person;

17 (2) the website or proprietary online service
18 from which the address was obtained included, at
19 the time the address was obtained, a notice stating
20 that the operator of such a website or proprietary
21 online service will not give, sell, or otherwise transfer
22 addresses maintained by such site or service to any
23 other party for the purpose of initiating, or enabling
24 others to initiate, UCE; or

1 (3) the electronic mail address of the recipient
2 was obtained using automated means based on a
3 combination of names, letters, or numbers.

4 (b) DISCLAIMER.—Nothing in this section creates an
5 ownership or proprietary interest in such electronic mail
6 addresses.

7 **SEC. 206. VALID POSTAL ADDRESS.**

8 It shall be unlawful for any person to initiate the
9 transmission of commercial electronic mail or UCE with-
10 out identifying the valid, physical address of the sender
11 in a clear and conspicuous manner.

12 **TITLE III—ENFORCEMENT**

13 **SEC. 301. ENFORCEMENT BY FEDERAL TRADE COMMIS-**
14 **SION.**

15 Except as otherwise provided in section 102, the
16 Commission shall prevent any person from violating this
17 Act in the same manner, by the same means, and with
18 the same jurisdiction, powers, and duties as though all ap-
19 plicable terms and provisions of the Federal Trade Com-
20 mission Act (15 U.S.C. 41 et seq.) were incorporated into
21 and made a part of this Act. Except as provided in title
22 I, the Commission may seek penalties and fines according
23 to all applicable terms and provisions of the Federal Trade
24 Commission Act. Nothing in this Act shall be construed

1 to limit the authority of the Commission under any other
2 provision of law.

3 **SEC. 302. ENFORCEMENT BY CERTAIN OTHER AGENCIES.**

4 (a) IN GENERAL.—Compliance with this Act shall be
5 enforced—

6 (1) under section 8 of the Federal Deposit In-
7 surance Act (12 U.S.C. 1818), in the case of—

8 (A) national banks, and Federal branches
9 and Federal agencies of foreign banks, and any
10 subsidiaries of such entities (except brokers,
11 dealers, persons providing insurance, invest-
12 ment companies, and investment advisers), by
13 the Office of the Comptroller of the Currency;

14 (B) member banks of the Federal Reserve
15 System (other than national banks), branches
16 and agencies of foreign banks (other than Fed-
17 eral branches, Federal agencies, and insured
18 State branches of foreign banks), commercial
19 lending companies owned or controlled by for-
20 eign banks, organizations operating under sec-
21 tion 25 or 25A of the Federal Reserve Act (12
22 U.S.C. 601 and 611), and bank holding compa-
23 nies and their nonbank subsidiaries or affiliates
24 (except brokers, dealers, persons providing in-

1 insurance, investment companies, and investment
2 advisers), by the Board;

3 (C) banks insured by the Federal Deposit
4 Insurance Corporation (other than members of
5 the Federal Reserve System) insured State
6 branches of foreign banks, and any subsidiaries
7 of such entities (except brokers, dealers, per-
8 sons providing insurance, investment compa-
9 nies, and investment advisers), by the Board of
10 Directors of the Federal Deposit Insurance Cor-
11 poration; and

12 (D) savings associations the deposits of
13 which are insured by the Federal Deposit In-
14 surance Corporation, and any subsidiaries of
15 such savings associations (except brokers, deal-
16 ers, persons providing insurance, investment
17 companies, and investment advisers), by the Di-
18 rector of the Office of Thrift Supervision;

19 (2) under the Federal Credit Union Act (12
20 U.S.C. 1751 et seq.) by the Board of the National
21 Credit Union Administration with respect to any
22 Federally insured credit union, and any subsidiaries
23 of such a credit union;

24 (3) under the Securities Exchange Act of 1934
25 (15 U.S.C. 78a et seq.) by the Securities and Ex-

1 change Commission with respect to any broker or
2 dealer;

3 (4) under the Investment Company Act of 1940
4 (15 U.S.C. 80a-1 et seq.) by the Securities and Ex-
5 change Commission with respect to investment com-
6 panies;

7 (5) under the Investment Advisers Act of 1940
8 (15 U.S.C. 80b-1 et seq.) by the Securities and Ex-
9 change Commission with respect to investment ad-
10 visers registered under that Act;

11 (6) under State insurance law in the case of
12 any person engaged in providing insurance, by the
13 applicable State insurance authority of the State in
14 which the person is domiciled, subject to section 104
15 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

16 (7) under part A of subtitle VII of title 49,
17 United States Code, by the Secretary of Transpor-
18 tation with respect to any air carrier or foreign air
19 carrier subject to that part;

20 (8) under the Packers and Stockyards Act,
21 1921 (7 U.S.C. 181 et seq.) (except as provided in
22 section 406 of that Act (7 U.S.C. 226, 227)), by the
23 Secretary of Agriculture with respect to any activi-
24 ties subject to that Act;

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1 (9) under the Farm Credit Act of 1971 (12
2 U.S.C. 2001 et seq.) by the Farm Credit Adminis-
3 tration with respect to any Federal land bank, Fed-
4 eral land bank association, Federal intermediate
5 credit bank, or production credit association; and

6 (10) under the Communications Act of 1934
7 (47 U.S.C. 151 et seq.) by the Federal Communica-
8 tions Commission with respect to any person subject
9 to the provisions of that Act.

10 (b) EXERCISE OF CERTAIN POWERS.—For the pur-
11 pose of the exercise by any agency referred to in sub-
12 section (a) of its powers under any Act referred to in that
13 subsection, a violation of this Act is deemed to be a viola-
14 tion of a requirement imposed under that Act. In addition
15 to its powers under any provision of law specifically re-
16 ferred to in subsection (a), each of the agencies referred
17 to in that subsection may exercise, for the purpose of en-
18 forcing compliance with any requirement imposed under
19 this Act, any other authority conferred on it by law.

20 **SEC. 303. ENFORCEMENT BY STATES.**

21 (a) CIVIL ACTION.—In any case in which the attor-
22 ney general of a State has reason to believe that an inter-
23 est of the residents of that State has been or is threatened
24 or adversely affected by any person engaging in a practice
25 that violates this Act, the State, as *parens patriae*, may

1 bring a civil action on behalf of the residents of the State
2 in a district court of the United States of appropriate ju-
3 risdiction or in any other court of competent jurisdiction—

4 (1) to enjoin that practice; or

5 (2) to obtain damages on behalf of residents of
6 the State, in an amount equal to the greater of—

7 (A) the actual monetary loss suffered by
8 such residents; or

9 (B) the amount determined under sub-
10 section (b).

11 (b) STATUTORY DAMAGES.—For purposes of sub-
12 section (a)(2)(B), the amount determined under this sub-
13 section is the amount calculated by multiplying the num-
14 ber of willful, knowing, or negligent violations of this Act
15 by an amount, in the discretion of the court, of up to \$10
16 (with each separately addressed unlawful message received
17 by such residents treated as a separate violation). In de-
18 termining the per-violation penalty under this subsection,
19 the court shall take into account the degree of culpability,
20 any history of prior such conduct, ability to pay, the extent
21 of economic gain resulting from the violation, and such
22 other matters as justice may require.

23 (c) ATTORNEY FEES.—In the case of any successful
24 action under subsection (a), the State shall be awarded

1 the costs of the action and reasonable attorney fees as de-
2 termined by the court.

3 (d) NOTICE.—

4 (1) PRE-FILING.—Before filing an action under
5 paragraph (1), an attorney general shall provide to
6 the Commission—

7 (A) written notice of that action; and

8 (B) a copy of the complaint for that ac-
9 tion.

10 (2) CONTEMPORANEOUS.—If an attorney gen-
11 eral of a State determines that it is not feasible to
12 provide the notice required by paragraph (1) before
13 filing the action, the notice and a copy of the com-
14 plaint shall be provided to the Commission when the
15 action is filed.

16 (e) INTERVENTION.—If the Commission receives no-
17 tice under subsection (d), the Commission—

18 (1) may intervene in the action that is the sub-
19 ject of the notice; and

20 (2) has the right—

21 (A) to be heard with respect to any matter
22 that arises in that action; and

23 (B) to file a petition for appeal.

24 (f) CONSTRUCTION.—For purposes of bringing any
25 civil action under subsection (a), nothing in this Act shall

1 be construed to prevent an attorney general of a State
2 from exercising the powers conferred on the attorney gen-
3 eral by the laws of that State to—

4 (1) conduct investigations;

5 (2) administer oaths or affirmations; or

6 (3) compel the attendance of witnesses or the
7 production of documentary and other evidence.

8 (g) LIMITATION ON STATE ACTION WHILE FEDERAL
9 ACTION IS PENDING.—If the Commission or other appro-
10 priate Federal agency under section 208(a) has instituted
11 a civil action or an administrative action for violation of
12 this Act, no State attorney general may bring a separate
13 action under this subsection during the pendency of that
14 action against any defendant named in the complaint of
15 the Commission or the other agency for any violation of
16 this Act alleged in the complaint. Nothing in this sub-
17 section shall preclude a State from joining an action
18 brought by the Commission or other agency or cooperating
19 with the Commission's or agency's prosecution of that ac-
20 tion.

21 **SEC. 304. ACTION BY PROVIDER OF INTERNET ACCESS**
22 **SERVICE.**

23 (a) ACTION AUTHORIZED.—A provider of Internet
24 access service adversely affected by a violation of this Act
25 may bring a civil action in any district court of the United

1 States with jurisdiction over the defendant, or in any other
2 court of competent jurisdiction, to—

3 (1) enjoin further violation by the defendant; or

4 (2) recover damages in an amount equal to the
5 greater of—

6 (A) actual monetary loss incurred by the
7 provider of Internet access service as a result of
8 such violation; or

9 (B) the amount determined under sub-
10 section (b).

11 (b) STATUTORY DAMAGES.—For purposes of sub-
12 section (a)(2)(B), the amount determined under this para-
13 graph is the amount calculated by multiplying the number
14 of willful, knowing, or negligent violations by an amount,
15 in the discretion of the court, of up to \$10 (with each
16 separately addressed unlawful message received by such
17 residents treated as a separate violation). In determining
18 the per-violation penalty under this subsection, the court
19 shall take into account the degree of culpability, any his-
20 tory of prior such conduct, ability to pay, the extent of
21 economic gain resulting from the violation, and such other
22 matters as justice may require.

23 (c) ATTORNEY FEES.—In any action brought pursu-
24 ant to subsection (a), the court may, in its discretion, re-
25 quire an undertaking for the payment of the costs of such

1 action, and assess reasonable costs, including reasonable
2 attorneys' fees, against any party.

3 **SEC. 305. ACTION BY INDIVIDUAL CONSUMERS.**

4 (a) ACTION AUTHORIZED.—A recipient adversely af-
5 fected by a violation of this Act may, if otherwise per-
6 mitted by the laws or rules of State court, bring, in an
7 appropriate court of that State, an action to—

8 (1) enjoin further violation by the defendant;

9 (2) recover damages in an amount equal to the
10 greater of—

11 (A) actual monetary losses incurred by the
12 plaintiff as a result of such violation; or

13 (B) the amount determined under sub-
14 section (b); or

15 (3) both enjoin further violation and recover
16 damages under paragraphs (1) and (2).

17 (b) STATUTORY DAMAGES.—For purposes of sub-
18 section (a)(2)(B), the amount determined under this sub-
19 section is the amount calculated by multiplying the num-
20 ber of willful, knowing, or negligent violations adversely
21 affecting that recipient by an amount, determined in the
22 discretion of the court, of not more than \$1,000. Each
23 separately addressed unlawful electronic mail message re-
24 ceived by the plaintiff shall be treated as a single violation
25 regardless of the number of violations contained in that

1 message. In determining the per-violation penalty under
2 this subsection, the court shall take into account the de-
3 gree of culpability, any prior history of such conduct, abil-
4 ity to pay, the extent of economic gain resulting from the
5 violation, and such other matters as justice may require.

6 (c) LIMITATION ON ACTIONS.—

7 (1) IN GENERAL.—No action may be brought
8 under or based on this section against an electronic
9 mail service provider or Internet Service Provider in-
10 volved in only the routine transmission of the com-
11 mercial electronic mail or UCE sent in violation of
12 this Act.

13 (2) INDIVIDUAL RIGHT OF ACTION.—The right
14 of action granted in this section is an individual
15 right. No action brought under this section or based
16 on this section may be maintained as a class action
17 under Rule 23 of the Federal Rules of Civil Proce-
18 dure or any State law, rule, or procedure for class
19 actions or other representative actions.

20 (d) ATTORNEY FEES AND COSTS.—In any action
21 brought pursuant to subsection (a) the court may, in its
22 discretion, require the payment of the costs of such action,
23 and assess reasonable costs, including reasonable attor-
24 neys' fees, against any party.